

Amendments to the Claims:

This listing of claims will replace all prior versions, and listings, of claims in the application:

Listing of Claims:

1. (Currently Amended) An illustrative drug card, comprising:
 - an illustrative portion, where the illustrative portion includes a list of medications used by a patient, with the list represented by an illustration of each medication;
 - a symbol~~visually~~-aided instruction on when to administer a medication listed in the list of medications; and
 - a symbol~~visually~~-aided instruction on how to administer a medication listed in the list of medications.
2. (Currently Amended) An illustrative drug card as set forth in claim 1, wherein the illustrative drug card is foldable into a wallet sized booklet, such that when folded, the wallet sized booklet is in a substantially planar form.
3. (Currently Amended) An illustrative drug card as set forth in claim 1, wherein the illustrative drug card is a substantially planar sheet, and wherein the illustrative drug card further comprises a magnetic backing such that the magnetic backing is approximately the same size as the planar sheet. is a magnet.
4. (Original) An illustrative drug card as set forth in claim 1, wherein the illustration of each medication is a photograph.
5. (Original) An illustrative drug card as set forth in claim 1, wherein the illustration of each medication is a pouch, where an actual medication may be placed.

6. (Currently Amended) An illustrative drug card as set forth in claim 1, wherein the symbol~~visually~~-aided instruction on when to administer a medication includes a symbol representing a time of a day.
7. (Original) An illustrative drug card as set forth in claim 6, wherein the symbol representing a time of a day includes an item selected from a group consisting of a sun, moon, and stars.
8. (Currently Amended) An illustrative drug card as set forth in claim 1, wherein the symbol~~visually~~-aided instruction on how to administer a medication is a symbol representing what to administer with the medication.
9. (Original) An illustrative drug card as set forth in claim 8, wherein the symbol representing what to administer with the medication includes an item selected from a group consisting of a liquid and food.
10. (Original) An illustrative drug card as set forth in claim 1, further comprising patient-specific allergy information on the illustrative portion.
11. (Original) An illustrative drug card as set forth in claim 1, further comprising contact information on the illustrative portion.
12. (Original) An illustrative drug card as set forth in claim 1, further comprising medication interaction precautions on the illustrative portion.
13. (Original) An illustrative drug card as set forth in claim 1, further comprising brail on the illustrative portion, whereby blind patients may read the illustrative drug card through the brail.
14. (Original) An illustrative drug card as set forth in claim 2, wherein the illustration of each medication is a photograph.

15. (Currently Amended) An illustrative drug card as set forth in claim 14, wherein the symbol~~visually~~-aided instruction on when to administer a medication includes a symbol representing a time of a day.
16. (Original) An illustrative drug card as set forth in claim 15, wherein the symbol representing a time of a day includes an item selected from a group consisting of a sun, moon, and stars.
17. (Currently Amended) An illustrative drug card as set forth in claim 16, wherein the symbol~~visually~~-aided instruction on how to administer a medication is a symbol representing what to administer with the medication.
18. (Original) An illustrative drug card as set forth in claim 17, wherein the symbol representing what to administer with the medication includes an item selected from a group consisting of a liquid and food.
19. (Original) An illustrative drug card as set forth in claim 18, further comprising patient-specific allergy information on the illustrative portion.
20. (Original) An illustrative drug card as set forth in claim 19, further comprising contact information on the illustrative portion.
21. (Original) An illustrative drug card as set forth in claim 20, further comprising medication interaction precautions on the illustrative portion.
22. (Original) An illustrative drug card as set forth in claim 21, further comprising brail on the illustrative portion, whereby blind patients may read the illustrative drug card through the brail.
23. (Original) An illustrative drug card as set forth in claim 3, wherein the illustration of each medication is a photograph.

24. (Currently Amended) An illustrative drug card as set forth in claim 23, wherein the symbol~~visually~~-aided instruction on when to administer a medication includes a symbol representing a time of a day.
25. (Original) An illustrative drug card as set forth in claim 24, wherein the symbol representing a time of a day includes an item selected from a group consisting of a sun, moon, and stars.
26. (Currently Amended) An illustrative drug card as set forth in claim 25, wherein the symbol~~visually~~-aided instruction on how to administer a medication is a symbol representing what to administer with the medication.
27. (Original) An illustrative drug card as set forth in claim 26, wherein the symbol representing what to administer with the medication includes an item selected from a group consisting of a liquid and food.
28. (Original) An illustrative drug card as set forth in claim 27, further comprising patient-specific allergy information on the illustrative portion.
29. (Original) An illustrative drug card as set forth in claim 28, further comprising contact information on the illustrative portion.
30. (Original) An illustrative drug card as set forth in claim 29, further comprising medication interaction precautions on the illustrative portion.
31. (Original) An illustrative drug card as set forth in claim 30, further comprising brail on the illustrative portion, whereby blind patients may read the illustrative drug card through the brail.
32. (Original) An illustrative drug card as set forth in claim 3, wherein the illustration of each medication is a pouch, where an actual medication may be placed.

33. (Currently Amended) An illustrative drug card as set forth in claim 32, wherein the symbol~~visually~~-aided instruction on when to administer a medication includes a symbol representing a time of a day.
34. (Original) An illustrative drug card as set forth in claim 33, wherein the symbol representing a time of a day includes an item selected from a group consisting of a sun, moon, and stars.
35. (Currently Amended) An illustrative drug card as set forth in claim 34, wherein the symbol~~visually~~-aided instruction on how to administer a medication is a symbol representing what to administer with the medication.
36. (Original) An illustrative drug card as set forth in claim 35, wherein the symbol representing what to administer with the medication includes an item selected from a group consisting of a liquid and food.
37. (Original) An illustrative drug card as set forth in claim 36, further comprising patient-specific allergy information on the illustrative portion.
38. (Original) An illustrative drug card as set forth in claim 37, further comprising contact information on the illustrative portion.
39. (Original) An illustrative drug card as set forth in claim 38, further comprising medication interaction precautions on the illustrative portion.
40. (Original) An illustrative drug card as set forth in claim 39, further comprising brail on the illustrative portion, whereby blind patients may read the illustrative drug card through the brail.

REMARKS

This application has been carefully reviewed in light of the Office Action of January 06, 2005, wherein:

- A. Claims 1, 2, 5, 10, and 11 were rejected under 35 U.S.C. §102(b) as being anticipated by Schutten (6,575,297);
- B. Claims 4, 6-9, 12, and 14-21 were rejected under 35 U.S.C. §103(a) as being unpatentable over Schutten;
- C. Claims 3, 23-30, and 32-39 were rejected under 35 U.S.C. §103(a) as being unpatentable over Schutten in view of Stern (4,310,978);
- D. Claims 13 and 22 were rejected under 35 U.S.C. §103(a) as being unpatentable over Schutten in view of Will (4,593,819); and
- E. Claims 31 and 40 were rejected under 35 U.S.C. §103(a) as being unpatentable over Schutten in view of Stern and Will.

Claims 1-40 were discussed with Examiner Silbermann during a phone interview in January of 2005. Regarding Claims 1, 2, 5, 10, and 11, the differences between the prior art (i.e., Schutten) and the present invention were clarified. Upon review of the prior art and of Claims 1, 2, 5, 10, and 11, Examiner Silbermann agreed with Applicant's assertion that Schutten does not include symbols as applicable to the present invention, and that the use of symbols provide a new and useful function. However, it was agreed that text is visual and therefore the claims should be amended to reflect symbols and not text. Additionally, the fold-ability of the present invention was discussed. Regarding the fold-ability, the Examiner agreed that while Schutten may be foldable, it cannot be folded into a substantially planar form. However, the Examiner pointed out that the claim language only requires the card to be foldable, and that the substantially planar fold-ability should be written into the claims to avoid Schutten.

Regarding Claims 3, 23-30, and 32-39, the Examiner agreed that combining the Schutten invention with the Stern invention would result in a drug card with magnetic sheets that would resist being maintained in an index, as required by Schutten. The magnetic properties of the backing would create pages of drug cards that would either attract or repel each other and/or the binder's binding. However, the Examiner pointed out that a small magnet in the corner of the

Schutten invention would not cause such problematic properties. Therefore, the Examiner recommended that the claims be amended to reflect an illustrative drug card being a planar sheet with a planar magnet being the approximate size of the planar sheet.

Claim Rejections – 35 U.S.C. §102

A. Turning now to the Office Action, the Examiner rejected Claims 1, 2, 5, 10, and 11 under 35 U.S.C. §102(b) as being anticipated by Schutten (6,575,297).

The Examiner stated that Schutten discloses an illustrative drug card comprising an illustrative portion 32 and a visually aided instruction 14, and that the display is foldable. Regarding claims 1 and 5, the Examiner stated that the illustrative portion 32 includes a list represented by an illustration of each medication, wherein the illustration is a pouch (Figure 1). The Examiner further stated that Allergies and contact information were also included (Figure 1); and that the information (once written) in area 14 is considered to be “visual” since it can be seen. Additionally, the Examiner stated that Applicant’s specification describes the visually-aided instruction as text or symbols (page 6).

Nowhere in Schutten is there a visually-aided instruction. Schutten provides a “written guide portion 14” that allows a user to “write” instructions pertaining to a particular patient. (See Schutten, Col. 3) (Emphasis added). As such, the instructions in Schutten are textually aided, not visually aided as applicable to the present invention. An advantage of the present invention over that of Schutten is that it aids in removing literacy issues involved with medication. For the Schutten invention, a user must first be able to write instructions upon the drug card, and second, be able to read those instructions. Schutten is to be contrasted with the present invention where a substantial portion of the medication information is illustrated through drawings and symbols. For example, an illustration of a moon is used to symbolize the evening. Through the use of drawings and symbols, a user is less likely to become confused with the text, as may be the case with the invention of Schutten.

Furthermore, nowhere in Schutten are symbols representing what to administer with the medication. Although Figure 1 includes a blank space, the blank space is for “writ[ing] a

description of each pill..." (See Schutten, Col. 3, lines 40-42) (Emphasis added). A blank space alone is not to be considered a symbol. Furthermore, and as discussed previously, although Schutten discloses writing a textual description in the blank space, an illustrative symbol is not to be confused with text. As such, Schutten does not disclose symbols representing what to administer with the medication as applicable to the present invention.

As discussed above, Examiner Silbermann agreed with Applicant's assertion that Schutten does not include symbols as disclosed by the present application, and that the use of symbols provides a new and useful function, in that symbols remove the need for literacy. However, it was agreed that text is visual and therefore the claims should be amended to reflect symbols and not text, as the term visually-aided encompassed both text and symbols. Accordingly, the pertinent parts of Claim 1 have been amended to read, "...a symbolvisually-aided instruction on when to administer a medication listed in the list of medications; and a symbolvisually-aided instruction on how to administer a medication listed in the list of medications."

Furthermore, nowhere in Schutten is the fold-ability of the drug card described. The drug card in Shutten is specifically designed to have a plurality of pouches where a plurality of pills are placed, with the Schutten invention thereafter being placed into a binder. (See Schutten, Col. 3). The Schutten invention would not fold as taught by the present invention because of the plurality of pills and pockets. Should a user try to fold the Schutten invention, the plurality of pockets with their included pills would prevent the drug card from being folded into a substantially planar form. As such, the drug card of Schutten is not foldable as disclosed by the present invention.

Also as discussed above, the fold-ability of the present invention was discussed with Examiner Silbermann. Regarding the fold-ability, the Examiner agreed that while Schutten may be foldable, it cannot be folded into a substantially planar form. However, the Examiner pointed out that the claim language only requires the card to be foldable, and that the substantially planar fold-ability should be written into the claims to overcome Schutten. Accordingly, the pertinent parts of Claim 2 have been amended to read, "...wherein the illustrative drug card is foldable into

a wallet sized booklet, such that when folded, the wallet sized booklet is in a substantially planar form."

Regarding Claim 1, as Schutten does not teach all of the claimed limitations in Claim 1, the Applicant believes that Claim 1 is allowable. Regarding Claims 2, 5, 10, and 11, the Applicant refers the Examiner to the comments above regarding Claim 1. As Schutten does not teach all of the claimed limitations in Claim 1, the Applicant believes that Claims 2, 5, 10, and 11, which depend therefrom, are also allowable. Thus, the Applicant respectfully requests that this rejection be withdrawn.

Claim Rejections – 35 U.S.C. §103

B. Claims 4, 6-9, 12 and 14-21 were rejected under 35 U.S.C. 103(a) as being unpatentable over Schutten.

The four factors relevant to determining obviousness are: 1) the scope and content of the prior art, 2) the differences between the prior art and the Claims at issue, 3) the level of ordinary skill in the art when the invention was made, and 4) secondary indicia, such as commercial success and copying. *Graham v. John Deere Co.*, 383 U.S. 1, 17, 86 S.Ct. 684, 694, 15 L.Ed.2d 545 (1966). In addition, an examiner addressing obviousness must not take a "piecemeal approach, one in which [the examiner] takes the individual elements, item by item, and tries to show us that they each exist somewhere in the prior art. 'That all elements of an invention may have been old (the normal situation), some old and some new, or all new, is ... simply irrelevant.' " *Litton Systems*, 728 F.2d at 1443 (quoting *Environmental Designs Ltd. v. Union Oil Co. of California*, 713 F.2d 693, 698 (Fed.Cir.1983)); see also *Avia*, 853 F.2d at 1564 ("That some components of [the challenged patent] exist in prior art references is not determinative. '[I]f the combined teachings suggest only components of the Claimed design but not its overall appearance, a rejection under section 103 is inappropriate.' ") (quoting *In re Cho*, 813 F.2d 378, 382 (Fed.Cir.1987)).

The Examiner stated that Schutten does not specifically teach a picture of the medication, however, the Examiner further stated that this is considered to be an equivalent alternative and it

would have been obvious to one of ordinary skill in the art to show a picture of the medication instead of a sample as an alternate way of portraying the medication.

Regarding claims 6-9, the Examiner stated that Schutten does not particularly teach symbols, however, the Examiner further stated that this is considered to be a matter of design choice and that it would have been obvious to one of ordinary skill in the art to display whatever information is deemed necessary for the patient. Also, the Examiner stated that patentable novelty cannot be principally predicated on mere printed matter and arrangements thereof, but must reside basically in physical structure. *In re Montgomery*, 102 USPQ 248 (CCPA 1954). In response to the Applicant's prior argument regarding the use of symbols, the Examiner stated that it is only where claims define either new features of structure or new relations of printed matter to structure, or both, which new features or new relations give rise to some new and useful function, effect, or result, that the claims may be allowed. *Ex parte GWINN*, 112, USPQ 439 (BdApp&Int 1955).

In order to present a *prima facie* case of obviousness, the Examiner must provide (1) one or more references (2) that were available to the inventor and (3) that teach (4) a suggestion to combine or modify the references, (5) the combination or modification of which would appear to be sufficient to have made the claimed invention obvious to one of ordinary skill in the art.

Schutten does not teach or suggest a modification of a sample medication for a picture of the medication as an alternate way of portraying the medication. Incorporating a picture of each medication taken by a patient onto a single illustrative drug card is a timely and potentially costly process. Therefore, it would not be obvious to one in the art to substitute a sample for a picture.

Additionally, nowhere in Schutten can be found any reference for a medication guide using illustrative symbols as is applicable to the present invention. The Examiner contends that the use of specific symbols is a design choice and therefore not patentable, but cites no authority for such contention. Also, the Examiner stated that patentable novelty cannot be principally predicated on mere printed matter and arrangements thereof, but must reside basically in physical structure. The use of symbols is not mere printed matter. The symbols are printed upon a physical structure to perform a useful function. Therefore, the patentability does not rely upon

mere printed matter, but relies upon the functional utility of a symbol printed upon a physical illustrative drug card, thereby forming a unique physical structure that provides a unique functionality.

Furthermore, the present invention uses the symbols in a functional manner, not as a mere design choice or printed matter. Under 35 U.S.C. §101, “Whoever invents any new and useful process, machine, or manufacture, or composition of matter may obtain a patent therefore...” (Emphasis added). For example, if a color coded medication system was devised where medications of similar colors could be taken together, whereas medications at opposite ends of the color spectrum could not be taken together, the use of colors would be functional. In such an example, a blue pill would not be a mere design choice, but would have a functional significance (i.e., be useful) and would therefore be patentable. Applying this analogy to the present invention, the symbols are not mere designs, but provide a user with very specific information as to how the medication should be administered and therefore have a functional use and are useful within the meaning of §101. Accordingly, specific symbols such as a sun, a moon, stars, food, and liquid have a functional significance and are therefore patentable. In summation, the new relations of printed matter to structure give rise to a new and useful function.

Regarding Claims 4, 6-9, 12 and 14-21, the Applicant refers the Examiner to the comments above regarding Claim 1, and Claims 4, 6-9, 12 and 14-21. In addition to the reasons stated above regarding Claims 4, 6-9, 12 and 14-21, because Schutten does not teach all of the claimed limitations in Claim 1, the Applicant believes that Claims 4, 6-9, 12 and 14-21, which depend therefrom, are also allowable. Thus, the Applicant respectfully requests that this rejection be withdrawn.

C. Claims 3, 23-30 and 32-39 were rejected under 35 U.S.C. 103(a) as being unpatentable over Schutten in view of Stern (4,310,978).

The Examiner stated that Schutten does not teach the card as being magnetic, however, this is well-known in the art of cards. The Examiner further stated that Stern teaches an information card including a magnetic layer (Figure 4), and that it would have been obvious to

one of ordinary skill to utilize a magnetic layer in the device of Schutten so that the card may be displayed on a magnetic surface where it may be more easily seen.

The Examiner misinterprets the significance of the Schutten patent. The Schutten patent was specifically devised such that it can contain an index of medications to be included in "...every popular size of binder." (See Schutten, Col. 3, lines 8-9). A main idea behind the Schutten invention is that it reduces stiffness and bulk, and can be maintained in "...an easily indexed form." (See Schutten, Col. 2, lines 15-19). Because the Schutten patent has been devised to reduce bulk and be placed in a binder to maintain an index, the present invention expressly teaches against the combination of Schutten with a magnetic backing. Combining the Schutten invention with the Stern invention would result in a drug card that would have increased stiffness and bulk, and would resist being maintained in an index. The magnetic properties of the backing would create pages of drug cards that would either attract or repel each other and/or the binder's binding.

Because the Schutten patent expressly states that it is disadvantageous to create a drug card that is stiff and bulky and that it would be desirable to maintain a plurality of drug cards in a single index, the Schutten patent provides no suggestion to create a drug card with a magnetic backing, and, in fact, teaches against such a feature, as a card so produced would not be functional in a single index because of the magnetic properties.

As mentioned above, Claim 3 was discussed with the Examiner. The Examiner agreed with the Applicant's assertion that combining the Schutten invention with the Stern invention would result in a drug card with magnetic sheets that would resist being maintained in an index, as required by Schutten. However, the Examiner pointed out that a small magnet in the corner of the Schutten invention would not cause such problematic properties. Therefore, the Examiner recommended that the claims be amended to reflect an illustrative drug card being a planar sheet with a planar magnet being the approximate size of the planar sheet. Accordingly, the pertinent parts of Claim 3 has been amended to read, "...wherein the illustrative drug card is a substantially planar sheet, and wherein the illustrative drug card further comprises a magnetic backing such that the magnetic backing is approximately the same size as the planar sheet. is a magnet.."

For reasons stated above, a combination of Schutten with Stern does not teach all of the limitations of the present invention. Also, even if the combination did teach the present application, the references must include a suggestion to combine or modify the references to arrive at the claimed invention, which they do not. In fact, the references expressly teach against such a combination or modification.

Regarding Claims 3, 23-30 and 32-39, the Applicant refers the Examiner to the comments above regarding Claim 1. In addition to the reasons stated above, because the inventions of Schutten and Stern (neither alone nor in combination) teach all of the limitations of Claim 1, the Applicant believes that Claims 3, 23-30 and 32-39, which depend therefrom, are also allowable. Thus, the Applicant respectfully requests that this rejection be withdrawn.

D. Claims 13 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schutten in view of Will (4,593,819).

The Examiner stated that Schutten does not teach using Braille, however, this is well known in the art. The Examiner further stated that Will teaches a medical chart including Braille thereon (Figure 2), and that it would have been obvious to one of ordinary skill in the art to utilize Braille on the device of Schutten so that visually impaired patients may use the card.

Regarding Claims 13 and 22, the Applicant refers the Examiner to the comments above regarding Claim 1. As the inventions of Schutten and Will (neither alone nor in combination) teach all of the limitations of Claim 1, the Applicant believes that Claims 13 and 22, which depend therefrom, are also allowable. Thus, the Applicant respectfully requests that this rejection be withdrawn.

E. Claims 31 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schutten in view of Stern and Will.

The Examiner stated that it would have been obvious to one of ordinary skill in the art to utilize Braille on the magnetic card for the same reasons as described above.

Regarding Claims 31 and 40, the Applicant refers the Examiner to the comments above regarding Claim 1. As the inventions of Schutten, Will, and Stern (neither alone nor in combination) teach all of the limitations of Claim 1, the Applicant believes that Claims 31 and 40, which depend therefrom, are also allowable. Thus, the Applicant respectfully requests that this rejection be withdrawn.